

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

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|--|---|-------------------------|
| In re: |) | |
| |) | Chapter 11 |
| ALPHA NATURAL RESOURCES, INC., <i>et al.</i> , |) | Case No. 15-33896 (KRH) |
| |) | |
| Debtors. |) | (Jointly Administered) |
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MAR-BOW VALUE PARTNERS, LLC'S MOTION TO REOPEN CASE

Mar-Bow Value Partners, LLC ("Mar-Bow"), by counsel, an unsecured creditor in this case, respectfully submits its motion to reopen these Chapter 11 cases.

This motion is brought pursuant to § 350(b) of the United States Bankruptcy Code (the "Code"), Fed. R. Bankr. P. 5010, Local Rule 5010-1 and the Court's Order Approving Motion for Entry of a Final Decree and Order (I) Closing These Chapter 11 Cases; (II) Authorizing and Directing the Reorganized Debtors to (A) Make the Final Category 1 Distribution and (B) Apply Any Unclaimed Distributions to the Reorganized ANR Contingent Revenue Payments; (III) Discharging the Claims Oversight Committee; and (IV) Terminating Kurtzman Carson Consultants, LLC as Claims, Ballot and Noticing Agent entered June 28, 2018 (Doc. 4119) (the "Final Decree").

In support thereof, Mar-Bow respectfully states as follows:

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Relevant Background

1. Mar-Bow is an unsecured creditor of the Reorganized Debtors.
2. McKinsey Recovery & Transformation Services U.S., LLC (“McKinsey”) was appointed as the Debtors’ turnaround advisor under Code §§ 327(a) and 1107(b). (Doc. 212).
3. Mar-Bow appealed from certain Orders entered by this Court regarding the adequacy of McKinsey’s disclosures under Fed. Bankr. Rule 2014 and the grant of McKinsey’s fee applications. (Docs. 3056, 3065, 3169, 3375, 3377, 3420, 3452 and 3673).
4. Mar-Bow’s appeals have been consolidated and remain pending before the U.S. Court of Appeals for the Fourth Circuit, which has yet to hear argument or render a decision. *See Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Services U.S., LLC et al.*, Nos. 17-2268, 17-2269 (4th Cir.).
5. On June 28, 2018 and pursuant to the Final Decree, these Chapter 11 cases were closed.
6. The Final Decree provides that the “Order is without prejudice to any party’s right to re-open any Chapter 11 Case or Chapter 11 Cases. (Final Decree ¶ 3).
7. Code § 350(b) provides that a case may be reopened for “cause.”

Cause for Reopening these Chapter 11 Cases – McKinsey’s Fraud on the Court

8. Contemporaneously with the filing of this motion and in support of this motion, Mar-Bow is filing with the Court an additional motion (the “Supporting Motion”) seeking the following relief: (i) pursuant to Fed. R. Bankr. P. 9024/Fed. R. Civ. P 60(d)(3) requesting the Court to set aside its Orders¹ denying Mar-Bow’s requests for additional disclosures and public disclosures by McKinsey, approving McKinsey’s fee applications without reductions on account

¹ Orders sought be set aside -- Docs. 2895 (¶¶ 2-4 only), 3055, 3060, 3416, 3664, 3665 and 3666.

of disclosure violations and finding that McKinsey fully complied with Fed. R. Bankr. P. 2014 – all on the basis of public documents evidencing a credible case of McKinsey’s fraud on the Court, and (ii) pursuant to Fed. R. Bankr. P. 8008(a)(3) requesting the Court for an indicative ruling that the matters presented raise a substantial issue. The Supporting Motion is hereby incorporated herein as if fully restated in its entirety.

9. As explained in detail in the Supporting Motion, Mar-Bow has recently discovered additional gravely troubling and disqualifying disclosure violations on the part of McKinsey. These disqualifying disclosure violations appear on their face to establish McKinsey’s fraud on the Court and constitute and establish cause for reopening these Chapter 11 cases. These disqualifying disclosure violations necessitate action on the part of the Court.

10. This request to reopen the bankruptcy case does not require counsel for any entities other than McKinsey to appear or participate. As the Court is aware, disinterestedness litigation can result in disqualification orders years after a bankruptcy case is closed, especially when appeals are involved.² If the Court later determines that compensation to McKinsey must be disgorged, other counsel could become involved at that point to address disbursement issues.

Prayer for Relief

WHEREFORE, Mar-Bow respectfully moves the Court to reopen these Chapter 11 cases so as to allow the Court (i) to address the additional disclosure violations on the part of McKinsey that have come to light, (ii) to address credible allegations from public documents evidencing McKinsey’s fraud on the Court and (iii) to grant Mar-Bow’s request for an indicative ruling. Mar-Bow further respectfully requests the Court to grant such other related and additional relief as the Court shall deem just and appropriate.

² See, e.g. *In re Federated Department Stores, Inc.*, 44 F.3d 1310 (6th Cir. 1995).

Respectfully submitted,

MAR-BOW VALUE PARTNERS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of July, 2018, a true and accurate copy of the foregoing Motion was served via First Class U.S. Mail (postage prepaid), via e-mail or via ECF in accordance with the Court's Order Establishing Certain Notice, Case Management and Administrative Procedures entered on August 5, 2015 (Doc. 111) and the Service List maintained by Kurtzman Carson Consultants in this case. Service included the following persons:

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